

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant has failed to prove by a preponderance of credible evidence that she suffered accidental injury arising out of and in the course of her employment from December 1993 through March 1994 while working for the respondent.

Claimant alleges a back injury occurring in December 1993 but provides no specific date of said injury. Claimant testifies that she simply awoke one morning with right leg pain. She further advised to having told Mr. Kelly Moore, her supervisor, of the right leg and back pain. Mr. Moore denies this. This conversation supposedly took place in January 1994, but claimant cannot provide a specific date on which the alleged conversation occurred. Claimant further alleges that she told Mr. Moore of her right leg problem sometime in February 1994, but again is unable to specify the date of this conversation.

Claimant was terminated on March 9, 1994, for reasons unrelated to her alleged injury. Claimant allegedly sought treatment with a chiropractor but no evidence of this treatment was submitted for the court's consideration.

Personnel records submitted at the preliminary hearing by the respondent indicate that claimant suffered accidental injury to her back in December 1992, but show no injury for the period December, 1993 through March 9, 1994, the date of claimant's termination.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. K.S.A. 44-501.

“Burden of Proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.” K.S.A. 44-508(g)

The claimant's burden of proof must be established by a preponderance of credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Claimant's contention of a back injury while employed with respondent is unsubstantiated. Claimant's contention that she advised respondent of this injury in January and again in February 1994, are unsupported by any records. Respondent's witnesses, Mr. Kelly Moore, plant superintendent, and a Ms. Janeen Bailey, office manager, both deny claimant's contention that she had advised respondent of the alleged injuries.

Having found the claimant failed to prove by a preponderance of evidence that she suffered injury arising out of and in the course of her employment with respondent during the period December 1993 through March 1994, the remaining issues of notice and written claim are rendered moot.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes, dated

September 19, 1994, is reversed and claimant is denied preliminary benefits against the respondent, Monfort of Colorado, Inc., for injury occurring during the period of December 1993 through March 1994.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Attorney at Law, Wichita, KS
Dale V. Slape, Attorney at Law, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director